

LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036

DOCKET FILE COPY ORIGINAL

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
HENRIETTA WRIGHT
MARY J. DENT
DANIEL S. GOLDBERG
W. KENNETH FERREE
THOMAS G. GHERARDI, P.C.
COUNSEL

(202) 429-4900
TELECOPIER:
(202) 429-4912

EX PARTE OR LATE FILED

September 29, 1995

SEP 29 1995

BY HAND

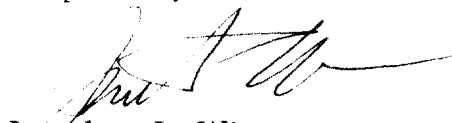
Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PR Docket No. 93-253, Ex parte Presentation

Dear Mr. Secretary:

Submitted herewith on behalf of RAM Mobile Data USA Limited Partnership ("RMD") an original and one copy of a proposed modification to the Commission's auction procedures for 900 MHz SMR auctions that have been distributed in connection with the above-referenced docket. This proposal is being submitted and was discussed, in general terms, late yesterday afternoon by the undersigned with the Commission personnel also are identified as recipients to this letter.

Respectfully submitted,


Jonathan L. Wiener
Attorney for
RAM Mobile Data USA Limited Partnership

Enclosures

cc: Rosalind K. Allen
Amy Zoslov
Evan R. Kwerel
Jackie Chorney
Diane Law
Muriel Watkins

cc of Order rec'd
10/10/95

021

ESTABLISHING A SAFETY VALVE TO ALLOW AN INCREASE
IN ACTIVITY UNITS IN THE 900 MHz SMR AUCTIONS

This submission, which consists of a draft provision that could be added to the Commission's bidding procedures regarding activity rules for 900 MHz SMR auctions, is made on behalf of RAM Mobile Data USA Limited Partnership ("RMD") following discussions with the Commission's staff regarding RMD's "Emergency Petition for Reconsideration and/or Waiver of Activity Rules," filed on September 21, 1995. The draft provision reflects RMD's efforts to respond to concerns raised by the Commission's staff with respect to RMD's proposed solutions, and fleshes out how the "automatic waiver" approach suggested as RMD's third alternative in Section D of RMD's petition could work.¹

Several points should be noted with respect to the proposed activity rule provision:

Limited "Programmatic Change." RMD understands the Commission's concerns about significant software changes. RMD suggests that the proposed provision would require only that the software allow the Commission to change a bidder's activity units in response to a specific bidder request, which could be submitted the same way that bids are submitted.

Bidder Responsibility. The nature of the proposal requires a bidder to initiate the request for an increase in activity units. Accordingly, the Commission is not responsible for monitoring when such a request could be made, it need only confirm that a request, if made, meets the stated conditions.

No Discretion. The conditions state specifically when an increase in activity units would be permitted.

Limited Applicability. The particular conditions are designed to address the very specific concerns raised about the need for bidder flexibility to shift bids among

¹ Understanding that time is short, in an effort to respond to the Commission's staff as quickly as possible, RMD is making this submission without having an opportunity fully to review it with its auction consultant and internal auction team. RMD hopes to complete this process by Monday of next week.

blocks within an MTA. Among other things, it would only apply to bidders who are active bidders in an MTA, who have been outbid by an amount that substantially exceeds the high bid for what the Commission has identified as a less valuable (*i.e.*, heavier encumbered) license in the same MTA, and for whom an increase in activity units is “necessary” to make a bid for such a less encumbered substitute license within the same MTA.

De Minimus Standard. Although RMD believes that no de minimus standard is necessarily required (it being sufficient evidence of a problem in the auction process if a more heavily encumbered block is valued more highly than a less encumbered block), the de minimus standard that is proposed is designed to ensure that only significant anomalies in bidding patterns deviating from the values assumed by the Commission in establishing activity units will justify the grant of additional activity units. The particular standard proposed -- twice the then current minimum bid increment on the “more encumbered block” -- means that what is considered “de minimus” (or, at least, not substantial enough to justify relief) will vary in accordance with the values that are assumed to be associated with the licenses at issue.

“It May Never Happen.” If the Commission’s assessment about values reflected in the activity units is accurate, then the proposed provision may never have to be implemented or, if at all, only on rare occasions. But if there are serious problems, then RMD believes that its proposal offers a reasonable safety valve for addressing significant anomalies, where the failure to do so would result in a significant injustice.

The Incentive For Unnecessary Gamesmanship That Could Have Its Most Devastating Impact On Smaller Entrepreneurs Is Reduced. Even if never invoked, RMD believes that the proposed provision will have the effect of reducing the incentive for bidders to “park” on licenses they don’t really want in the auction. RMD believes that discouraging such gamesmanship will lead to a simpler, quicker, and fairer auction. Further, as important as this is to RMD, RMD suggests that the failure to establish such a safeguard may have the most devastating impact on smaller entrepreneurs, wishing to expand in a single or a very few markets, who may be denied this opportunity by the gamesmanship incentives that are inherent in the activity rule units and procedures that have been announced.

SUGGESTED NEW SECTION II.D TO BIDDING PROCEDURES

D. INCREASE IN ACTIVITY UNITS

In stage 2 or 3 of the auction, each "active bidder" will, upon its request (to be submitted contemporaneously with its bids in the same round), be allowed to increase its activity units by the amount "necessary" for it to bid on a "less encumbered block," if all of the following conditions are met:

(1) In the immediately preceding round of bidding, the requesting bidder had made a bid on a "more encumbered block" in the same MTA which bid met or exceeded the minimum acceptable bid, or just prior to the immediately preceding round the bidder had been the high bidder for such "more encumbered block" in that MTA;

(2) The requesting bidder is not, at the time of the request, the high bidder for the "more encumbered block" referenced in condition (1);

(3) The high bid for a "less encumbered block" in the same MTA is lower than the high bid for the "more encumbered block" referenced in condition (1) by an amount that is equal to or greater than the "de minimus" standard;

(4) With its request for additional activity units (and subject to its grant), the requesting bidder makes a bid for the "less encumbered block" referenced in condition (3) that meets or exceeds the minimum acceptable bid for that block;

(5) The requesting bidder has insufficient available activity units to enable it to bid on the desired "less encumbered block" and all of the other licenses for which it makes a bid in the same round;

(6) The requesting bidder would have had sufficient activity units to enable it to bid on the "more encumbered block" referenced in condition (1) and all of the other licenses for which it makes a bid in the same round; and

(7) The total of the bidder's activity units upon the grant of the additional activity units requested does not exceed the activity unit level the bidder had at the start of the auction.

As used in this Section II.D, the following terms have the following meanings:

An "active bidder" means a bidder who meets the criteria set forth in conditions (1) through (7) above and who requests an increase in its activity units.

“Necessary” means the difference between (i) the amount of activity units an active bidder needs to make all of its bids in the round during which its request is made, including the bid(s) identified in condition (4) above, less (ii) the amount of activity units held by that bidder at the time of the request. An increase in activity units is not “necessary” if the amount of activity units in (ii) exceeds the amount in (i).

A “less encumbered block” means a license that has more activity units associated with it than the “more encumbered block” in the MTA to which it is being compared.

A “more encumbered block” means a license that has less activity units associated with it than the “less encumbered block” in the MTA to which it is being compared.

The “de minimus” standard means an amount equal to the total of two minimum bid increments (measured at the time that a request for additional activity units is made) for the “more encumbered block” that is identified in condition (1) above.

Bidder(s) may make requests for additional activity units as to one or more licenses at any time that the conditions set forth above are met. Each request must individually and, if granted, collectively meet the conditions specified based on different “less encumbered” and “more encumbered” blocks.

An example of the application of this rule is as follows. At the beginning of stage 2, Bidder “X” had the high bid for a Block A in New York with a bid of \$50,000. In the next round, another bidder bids \$200,000 for this Block. In that same round, the high bid for the “less encumbered block,” Block B, was \$60,000. As long as the minimum bid increments have not been varied by the Commission from the general standard stated in Section I.A of these Auction Procedures,* the difference is more than “de minimus” (in this example, because the activity units associated with Block A are 1,012,525, the “de minimus” standard is \$20,250.50). Accordingly, if requested and if “necessary,” Bidder “X” would be granted the “necessary” number of additional activity units to bid on Block B.

* Based upon the preliminary 900 MHz SMF Bidder Package recently released by the Commission’s staff.